GARNISHMENT—SET-OFF OF DEBT NOT YET DUE.—A bank, holding two notes against one of its depositors, who it appears was insolvent, though not judicially determined so at the time of garnishment, was summoned as garnishee. Neither of the notes was due at the service of the garnishment and one was still not due at the time of filing answer in the main suit. *Held,* the notes not yet due even at the filing of the answer, are the proper subjects for set-off when the maker is insolvent. *Armitage Herchel Co.* v. *Jacob Barnett Amusement Co. et al.; Wunderlich* v. *Merchants Nat. Bank* (1910), — Minn. —, 124 N. W. 223.

The court in rendering the opinion in this case seemed to think the auhorities quite agreed in allowing the set-off under present circumstances, yet authority may be found to the contrary. The general rule laid down in WATERMAN, SET-OFF (Ed. 2,) §§ 66, 70, 92, 107, 110, in regard to set-off, is that in order for the demand to be allowed, it must appear affirmatively to have been a subsisting cause of action at the commencement of the plaintiff's suit and upon which an action might have been maintained. Accordingly it was held in *Martin* v. *Kunzmuller,* 37 N. Y. 396, that a note which has not matured at the time of the assignment for the benefit of creditors can not be set off though it becomes due before pleaded. The greater number of authorities, however, make an exception in case of the insolvency of the main debtor, and hold that insolvency is a ground for equitable set-off whether or not the debt is due. *Field* v. *Oliver,* 43 Mo. 200; WATERMAN, SET-OFF, §§ 414, 432, WADE, ATTACHMENT, § 518, 1 MORSE, BANKS AND BANKING (Ed. 3) 329, *Field* v. *Oliver,* 43 U. S. 200; *Schuler* v. *Israel,* 120 U. S. 506, *Ford's Adm'r* v. *Thornton,* 96 Ga. 254; *Kentucky Flour Co.'s Assignee* v. *Merchant's National Bank,* 90 Ky. 225; *Trust Co.* v. *Bank,* 91 Tenn. 336; *Knietherly* v. *Walls,* 27 Ind. 384. Practically all these authorities were considered in *Iler* v. *Rieger & Co., Defendants; Midland Nat. Bank, Garnishee Appellant,* 69 Mo. App. 64, in which case the facts were quite the same as in the present case and in which an opposite conclusion was reached, to the effect, that where a bank is garnishee in an attachment suit against one of its depositors, it cannot defend on the ground that the depositor is owing the bank a note not yet due, for a greater sum than his deposit. In *Huse* v. *Ames,* 104 Mo. 91, and *Chipman & Holt* v. *Ninth Nat. Bank,* 120 Pa. St. 86, *Beckwith* v. *Union Bank,* 9 N. Y. 211, it was held that insolvency and in the first case even though coupled with fraud, will not entitle the garnishee to an equitable or legal set-off unless coupled with the fact that the debt owing by the judgment debtor to the garnishee was due and demandable at the date of garnishment. Whatever uncertainty as to the tendency of the courts to allow set-off under such circumstances, was created by the recent cases in accord with *Iler* v. *Rieger & Co.,* above, was practically eliminated by the present case and the weight of authority can truly be said to sustain the present decision.

HOMESTEAD—DEED GRANTING EASEMENT—WIFE NOT SIGNING.—Defendant's husband executed and delivered to plaintiff a deed, by which he bargained, sold, conveyed unto the grantee, his heirs and assigns forever a strip